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FINANCING OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991
ELECTION OF JUDGES OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991

SECURITY COUNCIL
Fifty-second year

Identical letters dated 30 July 1997 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council

The President of the International Tribunal for the former Yugoslavia has requested, for the reasons set out in his attached letter of 18 June, an extension of the terms of office of the non-elected judges of the International Tribunal in order to allow them to dispose of ongoing cases. This matter raises institutional and budgetary questions pertaining to the status of the judges beyond their elected term of office and to related financial arrangements; these were explored in subsequent correspondence with the President, the Prosecutor and the Registrar of the Tribunal.

You may recall that at the election of judges of the International Tribunal by the General Assembly on 20 May 1997, a number of judges currently serving with the Tribunal were not elected for a second term of office. This in particular is the situation of the three judges composing Trial Chamber II

sitting in the Celebici case and whose term of office expires on 16 November 1997. If the same judges are not allowed to complete the case, it would be necessary to restart the trial with a new panel of judges and order the rehearings of witnesses and testimonies. At this stage of the proceedings this would unnecessarily prolong the trial and violate the right of the accused to due process of law.

The statute of the International Tribunal does not contain a provision similar to the one provided for in Article 13, paragraph 3, of the Statute of the International Court of Justice, whereby members of that Court continue to discharge their duties until they are replaced and, thereafter, until they finish any cases which they may have begun. It is, however, provided in article 13, paragraph 4, of the statute of the Tribunal that the terms and conditions of service of judges of the Tribunal shall be those of the judges of the International Court of Justice. Nevertheless, in the absence of an explicit statutory provision providing for the extension of the term of office of Tribunal judges to complete ongoing cases, an approval of the Security Council, as the parent organ, and of the General Assembly, as the electing organ, would be desirable to preclude any question about the legality of such an extension.

As more fully elaborated in the letter addressed to me by the President of the International Tribunal, the period required to complete the Celebici case is estimated at one year and the annual budgetary costs are estimated at $668,480. It is, of course, understood that in the period until the expiration of their elected term of office said judges would be assigned efficiently so as to reduce the period of extension required beyond the end of their elected term to the minimum consistent with due process of law.

I should appreciate it if you would bring the present letter and its attachment to the attention of members of the General Assembly and of the Security Council for their approval in the manner they deem fit.

(Signed) Kofi A. ANNAN

ANNEX

Letter dated 18 June 1997 from the President of the International Tribunal for the former Yugoslavia to the Secretary-General

Following the recent election of judges of the Tribunal with effect from 17 November 1997, there has arisen a serious problem to which I would like to draw your attention.

As you are probably aware, our Trial Chamber II, comprising Judges Karibi-Whyte, Odio Benito and Jan, is sitting in the Celebici case - a complex case, because it involves four defendants. None of the three judges has been re-elected and we will most likely face the situation later this year that the term of office of all judges will expire in November 1997 while the trial is still proceeding.

Under our Rules, judges cannot drop out once a trail has commenced. Were they to resign or cease to be in office, the trial would have to start again, with serious consequences (so far the Trial Chamber has heard 21 prosecution witnesses). At present it is envisaged that the trial could in fact continue for many months after the period of office of the judges expires. The restrictions imposed by the Tribunal having only one courtroom mean that soon we will have two trials (Blaskić and Celebici) running consecutively, each trial therefore only being held for two weeks of each month. In addition, we will have to make allowance for proceedings before the Appeals Chamber in two other cases (Erdemović and Tadić).

At present, as with the Rwanda Tribunal, there is no provision in the statute of the International Tribunal for the former Yugoslavia for judges, who are involved in a trial, still continuing with it after their period of office has expired. However, under article 13, paragraph 4, of the Tribunal's statute, provision is made that the terms and conditions of service of the judges shall be those of the judges of the International Court of Justice. Article 13, paragraph 3, of the Statute of the International Court of Justice prescribes that members of the Court shall continue to discharge their duties until their places have been filled. Furthermore, it provides that "though replaced, they shall finish any cases which they may have begun".

We would, therefore, like to request an extension of the three judges sitting in the Celebici case. We are, of course, aware of the financial implications of such an extension of the terms of office of judges and, therefore, at the suggestion of the Legal Counsel, our Registrar is prepared to submit a request for additional funds. We will, of course, try to expedite the trial as much as possible without, however, curtailing in any way the rights of the accused.

After discussing the matter with the Presiding Judge of the Trial Chamber (Judge Karibi-Whyte) we have come to the conclusion that a 12-month period (as from 17 November 1997) will be sufficient for the completion of the trial and the delivery of the judgement. This is, of course, on the assumption that we will change our present timetable which provided for two weeks per month for

each of the two trials already under way (Celebici before Trial Chamber II and Blaskić before Trial Chamber I) and make allowance for more time for the Celebici case. (In September Trial Chamber II would hold hearings for three weeks instead of two and in October it would hold hearings for four weeks instead of two.)

We are, of course, aware that this solution is not ideal, also because it will unduly delay the Blaskić trial. However, given the present lack of a second courtroom we have no alternative. May I add that an extension for 12 months of the three judges' term would not run counter to the practice of the International Court of Justice. We have been advised by the Registry of the International Court of Justice that in one case the mandate of an outgoing Judge (Gros) was extended for two years (1982-1984) while in another case (Judge Sette-Camara) it was extended for four years (1988-1992).

Finally, I would like to add on behalf of the Tribunal's Bureau that, after receiving the Prosecutor's memo of 17 June 1997, which has also been forwarded to you by our Registrar, the Bureau held a meeting with the members of Trial Chamber II. The Bureau asked them to do their utmost to finish the trial including the delivery of the judgement and the sentence, if any, before the expiry of the 12-month period, if the extension is granted by the Security Council and funding is available. The three judges are well aware of the need to speed up as much as possible trial proceedings, and assured the Bureau that in their view their judicial activities in the Celebici case should end well before the expiry of the 12-month period.

I should be most grateful to you if you would submit this letter to the members of the Security Council for their consideration and approval of the extension of tenure of the three aforementioned judges for 12 months as from 17 November 1997.

(Signed) Antonio CASSESE
President